

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RONALD SUITTER,)	
)	
Petitioner)	
)	
v.)	Civil No. 00-0014-B
)	
JEFFREY MERRILL,)	
)	
Respondent)	

***RECOMMENDED DECISION ON PETITION
FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254***

Petitioner filed this Petition for Writ of Habeas Corpus on January 28, 2000. Respondent answered the Petition on March 8, asserting among other things that the Petition was untimely under 28 U.S.C. Section 2244(d). The Court agrees, and therefore recommends the Petition be DISMISSED and the Writ DENIED.

Section 2244(d) provides that a one-year limitation period applies to applications for writs of habeas corpus. As relevant to this Petition, that time period began running on “the date on which the judgment became final by the . . . expiration of the time for seeking [direct review]” of the conviction. 28 U.S.C. § 2244(d)(1)(A). The time period is tolled under the statute during the time a “properly filed application for State post-conviction or other collateral review” is pending. 28 U.S.C. § 2244(d)(2).

The docket reveals that Petitioner was convicted on his pleas of guilty on all counts of a five-count indictment in CR-96-029 and all counts of a three-count indictment in CR-96-644 on June 16, 1997. Sentencing occurred on August 27 of that year. Petitioner’s right to appeal his sentence expired twenty days thereafter, or on September 16, 1997. Me. R. Crim. P. 40(c). Petitioner did not avail himself of his right to direct appeal. While ordinarily the Court would

allow an additional ninety days during which Petitioner might have sought a writ of certiorari from the United States Supreme Court, in this case Petitioner was jurisdictionally barred from seeking the writ for his failure to file a direct appeal. 28 U.S.C. § 1257. The statute of limitations on this Petition therefore began running on September 17, 1997.

With 36 days remaining in the one-year limitation period, Petitioner filed motions for reduction of sentence on August 12, 1998.¹ The denials of those motions were entered upon the respective dockets on September 3, 1998. Petitioner's right to appeal the denial of the motions for reduction of sentence expired twenty days thereafter, or on September 23, 1998. M. R. Crim. P. 37C(c). The remaining 36 days in the limitation period for this Petition began running on September 24, and expired on October 29, 1998. This Petition was not filed until January 28, 2000, and is therefore untimely.

Conclusion

Accordingly, I hereby recommend the Petition for Writ of Habeas Corpus be DISMISSED as untimely, and the Writ DENIED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

¹ According to Respondent's calculation, 317 days had expired when Petitioner filed the motions for reduction of sentence, leaving 48 days remaining in the one-year limitations period. The Court cannot explain the discrepancy, but is satisfied that 329 days had expired by August 12, 1998.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
United States Magistrate Judge

Dated on: March 23, 2000

ADMIN

U.S. District Court
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-14

SUITTER v. CORRECTIONS, ME WARD
Assigned to: JUDGE GENE CARTER
Demand: \$0,000
Lead Docket: None
Dkt# in other court: None

Filed: 01/28/00
Nature of Suit: 530
Jurisdiction: Federal Question

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

RONALD SUITTER
plaintiff

ROBERT M. NAPOLITANO
774-4109
[COR LD NTC]
765 CONGRESS STREET
PORTLAND, ME 04102

v.

CORRECTIONS, ME WARDEN
defendant

CHARLES K. LEADBETTER
289-3661
[COR LD NTC]
ASSISTANT ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, ME 04333
626-8800